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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

| Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program. | Rulemaking 15-02-020 (Filed February 26, 2015) |
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# RESPONSE OF UTICA WATER AND POWER AUTHORITY TO THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, AND SOUTHERN CALIFORNIA EDISON COMPANY FOR REHEARING OF DECISION 17-08-021

October 12, 2017

**MICHAEL J. MINKLER**
**General Manager**
**Utica Water & Power Authority**
1168 Booster Way
PO Box 358
Angels Camp, CA 95222
Telephone: 209-736-9419
Email: mjminkler@uticapower.net

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Utica Water and Power Authority (Utica) respectfully and timely submits this Response to the Application for Rehearing of Decision (D.) 17-08-021 filed by Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) (collectively, the Investor Owned Utilities (IOUs)) in this proceeding on September 27, 2017. This Response is timely filed and served pursuant to Rule 16.1(d) of the Commission's Rules of Practice and Procedure.

## I.
## INTRODUCTION

The IOUs' Application for Rehearing objects to a narrow issue contained in a footnote of Decision 17-08-021 (Decision). Utica's primary concern in responding to the Application for Rehearing is to ensure that this rehearing request and any Commission response thereto, regardless of the outcome, should not delay the implementation of the rest of the Decision. The Application for Rehearing focuses on a narrow and discrete issue that has no impact on the remainder of the Decision or the Advice Letters that the IOUs have filed in response to the Decision. Thus, there is no cause to delay any other aspect of the Decision or the corresponding Advice Letters.

Utica also maintains that the Application for Rehearing should be denied. The Decision is consistent with law and is a reasonable interpretation of the law it seeks to implement.

## II.
## THE IMPLEMENTATION OF AB 1979, INCLUDING CORRESPONDING ADVICE LETTERS, SHOULD NOT BE DELAYED BY CONSIDERATION OF THE IOUS' APPLICATION FOR REHEARING.

The Decision, in relevant part, implements Assembly Bill (AB) 1979 (Stats. 2016, ch. 665). Specifically, the Decision implements AB 1979's legislative mandate that the eligibility criteria for the IOUs' Renewable Market Adjusting Tariff (ReMAT) programs must be expanded to include hydroelectric facilities with nameplate ratings up four megawatts as long as they do not deliver more than the ReMAT capacity limitation of three megawatts to the grid.[1]

The issue raised by the IOUs in their Application for Rehearing is limited to a statement in Footnote 8 in the Decision. In that footnote, the Decision allows for the possibility that an AB 1979 facility could sell generation that exceeds three megawatts pursuant to other Commission programs.[2] The IOUs argue in their Application for Rehearing that the footnote is inconsistent with AB 1979.[3]

The IOUs Application for Rehearing relates to generation in excess of three megawatts, however, the Advice Letter (AL 5145-E) filed by PG&E to implement the AB 1979 provisions of the Decision on September 27, 2017, demonstrates that there is no confusion that the Decision does not allow for the possibility of an AB 1979 facility selling in excess of three megawatts under ReMAT. Thus, PG&E's AL 5145-E does not allow for the export of generation beyond three megawatts, and PG&E has not modified the ReMAT PPA to permit an AB 1979 facility to sell generation in excess of three megawatts under ReMAT. Utica agrees that the Advice Letter

[1] D.17-08-021, at pp. 1-2, 4-5; Appendix A (Public Utilities (PU) Code §399.20.5).
[2] D.17-08-021, at p. 5, n.8.
[3] IOUs' Application for Rehearing, at p. 3.

should not provide for the sale of generation beyond three megawatts under ReMAT. Any "rehearing" of the Decision regarding the sale of excess generation under another Commission approved program is not necessary, but also would not impact the implementation of the remainder of the Decision.

Utica agrees with PG&E's interpretation in its AL of D.17-08-021 and AB 1979 with respect to the three megawatt limitation under ReMAT. The tariff and PPA submitted by PG&E in AL 5145-E include that capacity limitation and, therefore, should not be delayed pending resolution the excess generation issue.[4] PG&E's AL 5145-E effectively allows for hydroelectric projects with nameplate ratings up to four megawatts to be eligible for ReMAT, while also making clear that generation above three megawatts is not permitted under a ReMAT PPA.[5] That is consistent with AB 1979 and the Decision. Further, given that the Decision was made "effective" the date of issuance (August 28, 2017), the IOUs' obligations under that Decision are not stayed by the filing of the Application for Rehearing.

In addition, as the Decision itself makes clear, generation beyond three megawatts would have to be sold under a separate program.[6] However, if such a program ever exists, a separate proceeding would be required to allow for the export of generation between three and four megawatts. As the IOUs point out, there are complex logistical and administrative issues that would have to be resolved during that proceeding,[7] but that would be the appropriate forum to resolve those issues – not a rehearing to address a footnote in the present Decision.

[4] While Utica does agree with PG&E's resolution of this particular issue in AL 5145-E, Utica is currently reviewing AL 5145-E to determine whether or not a protest is required to ensure consistency between PG&E's proposed changes and D.17-08-021.
[5] AL 5145-E, Appendices A-C.
[6] D.17-08-021, at p. 5.
[7] IOUs Application for Rehearing, at pp. 12-13.

The sale of excess generation above three megawatts from an AB 1979 facility is beyond the scope of AB 1979 and the Decision. The Decision, as-is, gives full effect to AB1979 within the broader framework of the Commission's other mandates. PG&E's AL 5145-E unequivocally caps generation under ReMAT at three megawatts, which is consistent with the statute and the Decision. Therefore, the IOUs' Application for Rehearing should be denied and further should not serve to impact or delay the implementation of the IOUs' revised ReMAT tariff programs and PPAs.

## III.
## THE DECISION IS CONSISTENT WITH LAW

In the Decision, the Commission had to reconcile AB1979's directive that newly eligible facilities not export more than three megawatts to the grid with other mandates that a facility be compensated for all power exported. The Decision does so in a way that is consistent with both statutory obligations. The Decision correctly finds that AB 1979 facilities cannot export more than three megawatts to the grid under ReMAT, but could potentially take advantage of another Commission-approved program that would allow for the sale of power between three and four megawatts.[8] This approach makes sense and gives effect to Commission's various mandates.

PU Code Section 399.20.5 states that the facility may not export more than three megawatts to the grid at any time; however, it also states that no payment will be made for any generation above three megawatts.[9] These may seem like contradictory statements, but not when understood in the broader context. PU Code Section 399.20.5 is an exception to the eligibility criteria contained in PU Code Section 399.20. Previous ReMAT Decisions by the Commission, as well as the standard ReMAT tariff and PPA already contain the three megawatt capacity limitation. This new expansion of eligibility by PU Code 399.20.5 allows facilities with

[8] D.17-08-021, at pp. 4-5.
[9] PU Code §399.20.5 (a)(2) and (b).

nameplate ratings up to four megawatts to participate in ReMAT, provided they do not export more than three megawatts within ReMAT and will not be paid for more than three megawatts under a ReMAT PPA.

PU Code Section 399.20.5 is a modification to ReMAT and does not speak to generation sold pursuant to other Commission programs. The Legislature left that issue for the Commission to resolve, and the Commission had to do that while being mindful of its other obligations. The Decision correctly achieves that end.

## IV.
## THE DECISION IS REASONABLE.

The IOUs argue that the Decision is arbitrary and capricious because there may not be other Commission approved programs that would allow AB 1979 facilities to sell generation between three and four megawatts. The IOUs contend that there are various logistical and administrative difficulties with such an arrangement.[10]

These things may be true, but such circumstances do not render the Decision arbitrary and capricious. A program could be created in the future that would allow AB1979 facilities to sell generation between three and four megawatts. If such a program were ever created, it would be subject to Commission approval, which would be the appropriate time to identify and resolve the issues raised by the IOUs. The issues associated with creating a new program to facilitate the sale of generation above three megawatts are complex. The interested stakeholders would have to weigh the cost of creating and administering such a program against the small amount of additional generation that would be potentially made available. If those issues prove to be irreconcilable and no such program is created, AB 1979 facilities would remain limited to exporting three megawatts under ReMAT.

[10] IOUs Application for Rehearing, at pp. 11-12.

The Commission, correctly, does not attempt to resolve these issues or create those programs in the Decision. The Decision simply leaves open the possibility that the full potential of an AB 1979 facility may someday be utilized in this manner, but commits to effectuating the unambiguous three megawatt cap under ReMAT now. The Decision is reasonable, not arbitrary and capricious, and thus the Application for Rehearing should be denied.

## V.
## CONCLUSION

For the reasons stated herein, the Commission should deny the IOUs' Application for Rehearing of D.17-08-021. Further, given that the Decision was made "effective" the date of issuance, the Advice Letters submitted by the IOUs to implement the Decision should proceed to review, revision (as necessary),[11] and resolution regardless of any action taken on this Application for Rehearing.

Respectfully submitted,

October 12, 2017

/s/ *MICHAEL J. MINKLER*

MICHAEL J. MINKLER
General Manager
Utica Water and Power Authority
1168 Booster Way
PO Box 358
Angels Camp, CA 95222
Telephone: 209-736-9419
Email: mjminkler@uticapower.net

[11] Again, Utica is reviewing AL 5145-E (PG&E now to determine if a Protest to that advice letter is necessary to ensure consistency with D.17-08-021.

**VERIFICATION**
**(Rule 1.11(a)(4))**

I am the General Manager for the Utica Water and Power Authority (Utica). Pursuant to Rule 1.11(a)(4), as General Manager, I make this verification for Utica. The statements in the foregoing RESPONSE OF UTICA WATER AND POWER AUTHORITY TO THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, AND SOUTHERN CALIFORNIA EDISON COMPANY FOR REHEARING OF DECISION 17-08-021, have been prepared and read by me and are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed on October 12, 2017, at Angels Camp, California.

Respectfully submitted,

/s/ *MICHAEL MINKLER*

MICHAEL J. MINKLER
General Manager
Utica Water and Power Authority
1168 Booster Way
PO Box 358
Angels Camp, CA 95222
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Email: mjminkler@uticapower.net